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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Brian Tripet

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01/26/2009

GREENLEE WINNER AND SULLIVAN P C

4875 PEARL EAST CIRCLE

SUITE 200

BOULDER, CO 80301

EXAMINER

PENG, BO

ART UNIT

PAPER NUMBER

1648

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Art Unit: 1648

DETAILED ACTION

1. The Office acknowledges the amendment filed on November 19, 2008. Claims 29-36, 38 have been cancelled. New Claims 39-44 have been added. Claims 1-28, 37 and 39-44 are pending.

2. Upon reconsideration the claim limitations, the examiner has decided to vacate the previous Election/Restrictions. New Election/Restrictions is set forth below. The examiner regrets any inconvenience this may cause Applicant. A prompt response to *Election/Restrictions* is encouraged by the examiner to expedite the prosecution of this case.

Election/Restrictions

3. Restriction is required under 35 U.S.C. 121 and 372. This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1. In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, Claim(s) 1-23, 37, 39-44 drawn to a technical feature of a composition comprising a purified peptide of SARS coronavirus S protein.

Group II, Claim(s) 24-28, drawn to a technical feature of a composition comprising a purified nucleic acid molecule encoding peptide of SARS coronavirus S protein.

4. The inventions listed as Groups I-II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

5. According to PCT Rule 13.2, unity of inventions exists only when the shared same or corresponding special technical feature is a contribution over the prior art. The inventions listed as Groups I-II do not related to a single general invention concept because they lack the same or corresponding special technical feature. The technical feature of Group I relates to an isolated SARS S polypeptide, which is shown by Rota et al. (GenBank accession No. AY278741) (Science 300 (5624), 1394-1399 (2003)). Therefore, the technical feature linking Groups I and II does not constitute a specific technical feature as defined by PCT Rule 13.2, as it does not define a contribution over the prior art.

6. The technical feature of Group II is considered to be a composition comprising a purified nucleic acid molecule encoding peptide of SARS coronavirus S protein.

Species Election

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7. This application contains claims directed to more than one species of the generic invention. These species do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features. Applicant is required under 35 U.S.C. § 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

8. If Group I is elected, Applicant is required to elect:
(1) a composition comprising one specific peptide by SEQ ID NO: (Claims 1-14, 19-28 and 39-44); OR
(2) a composition comprising a complex comprising one HR-N peptide and one HR-C peptide (Claims 15-18). Applicant is required to further elect one specific HR-N peptide by SEQ ID NO: and one HR-C peptide by SEQ ID NO:

9. If Group II is elected, Applicant is required to elect:
(3) a composition comprising one specific nucleic acid molecule by SEQ ID NO: (Claims 26-28).

10. According to PCT Rule 13.2 and to the guidelines in Section (f)(i)(A) of Annex B of the PCT Administrative Instructions, all alternatives of a Markush Group must have a common property or activity. According to PCT Rule 13.2 and to the guidelines in Section (f)(i)(B)(I) of Annex B of the PCT Administrative Instructions, all alternatives of a Markush Group must have a common structure. The chemical compounds of peptides with SEQ ID NOs are not regarded as being of similar nature because all the alternatives do not share either a common activity or a common structure. Therefore, these species do not relate to a single general inventive concept under PCT Rule 13.1 and PCT Rule 13.2.

11. **Applicant is advised that the reply to this requirement to be complete must include (i) an election of a invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.**

12. The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention.

12. If claims are added after the election, applicant must indicate which of these claims are readable upon the elected invention.

14. Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence

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or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

13. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bo Peng, Ph.D. whose telephone number is 571-272-5542. The examiner can normally be reached on M-F, 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell, Ph.D. can be reached on 571-272-0974. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

/BO PENG/

Examiner, Art Unit 1648